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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Implemental of Section 621(a)(1) of the Cable) MB Docket No. 05-311
Communications Policy Act of 1984 as Amended)
by the Cable Communications Consumer Protection)
and Competition Act of 1992)

COMMENTS OF PUBLIC CABLE TELEVISION AUTHORITY
IN OPPOSITION TO TENTATIVE CONCLUSIONS SET
FORTH IN SECOND FURTHER NOTICE OF
PROPOSED RULEMAKING (“FNPRM”)
IN THE ABOVE-REFERENCED DOCKET

The Public Cable Television Authority (“PCTA”) appreciates the opportunity to file comments in relation to the FNPRM in the above-referenced docket. In general, the PCTA opposes many of the tentative conclusions of the Federal Communications Commission (the “Commission”) as set forth in the FNPRM in relation to the notion that cable-related in-kind contributions constitute franchise fees and that local government possesses no authority regarding a cable operator’s use of public rights-of-way to provide non-cable services.

I. DESCRIPTION AND MISSION OF THE PCTA.

The PCTA constitutes a joint powers authority, formed pursuant to California statutory law, consisting of the Cities of Fountain Valley, Huntington Beach, Stanton, and Westminster (the “Member Cities”). It was originally formed in the 1970s to franchise and regulate cable television systems operating within the jurisdictional boundaries of the Member Cities. Over the years, the PCTA has undertaken numerous regulatory functions including, without limitation, rate regulation, franchise fee collection and enforcement, customer service, establishment and operation of public, educational and governmental channels (“PEG Channels”), as well as cable television franchise renewals and transfers. Its governing board consists of two elected city

1 council members from each of its Member Cities and it currently employs a full-time Executive
2 Director, an Assistant Executive Director, a Programming Manager, and PEG Programming
3 support staff. Over the years, the PCTA has involved itself in almost every aspect of cable
4 television regulation and has actively served the interests of its constituents through proactive
5 enforcement of federal, state, and local cable television laws and regulations.

6 The PCTA is one of the largest joint powers authorities providing regulatory and
7 programming services within the State of California. Its Member Cities receive a franchise fee of
8 five percent (5%) of gross revenues, as determined and calculated by DIVCA. During the last
9 quarter of 2018, it collected, on behalf of its Member Cities, quarterly franchise fees totaling
10 \$1,117, 597.17 and PEG Fees, set at one percent (1%) of gross revenues, of \$223,733.61. The
11 PCTA collects these franchise fees and PEG Fees and distributes them, based upon subscribership,
12 to each of its Member Cities.¹

13 Upon the adoption by the California Legislature of the Digital Infrastructure and Video
14 Competition Act of 2006 (“DIVCA”) (Calif. Public Utilities Code §§ 5800, *et seq.*), the PCTA
15 morphed from a regulatory agency into a robust programmer of the governmental channel serving
16 subscribers within each of the Member Cities. Through its programming efforts, funded entirely
17 through the collection of a one percent (1%) PEG Fee as established by DIVCA and implemented
18 by the Member Cities, the PCTA produces an average of thirty-two (32) hours of original and
19 quality governmental programming per month.²

20 Cable Services are provided by three (3) cable operators. The largest operator, by far, is
21

22 ¹ It is difficult to state with certainty the number of cable television subscribers residing within
23 the jurisdictional boundaries of the Member Cities. Whereas, prior to DIVCA, the cable operators
24 were required to, and did in fact, report subscriber counts to the PCTA, this practice ceased upon
25 DIVCA deregulation. The PCTA must now “estimate” subscriber counts based upon reported
26 gross revenues. For the last period, assuming that the average household spends \$360 per quarter
27 upon cable services subject to the franchise fee, there are approximately 62,098 households
28 subscribing to cable television services within the jurisdictional boundaries of the Member Cities.

² A listing of the various original shows produced by the PCTA during the past 9-12 months is
set forth on Exhibit A and incorporated by this reference. The PCTA, through its programming
efforts, constitutes a major source of valuable and unique information to the residents of all of its
Member Cities. Without its programming, much, if not all, of the public interest information
disseminated by the PCTA would not be available, or at least not readily available, to the residents
of Fountain Valley, Huntington Beach, Stanton and Westminster.

1 Spectrum Communications, in its role as successor to Time Warner Cable. In addition, AT&T,
2 through its U-Verse product, also serves a portion, but not all, of the Member Cities and Frontier
3 Communications, as successor to Verizon, likewise provides service to a relatively small number
4 of subscribers (collectively, the "Cable Operators"). All of the Cable Operators have elected to
5 operate pursuant to a State of California Franchise, as granted and administered through the
6 California Public Utilities Commission, and have abandoned the local franchises which were
7 operative within the PCTA until approximately 2008. Prior to DIVCA, while operating pursuant
8 to local franchises, the Cable Operators provided a variety of financial and in-kind services, such
9 as free cable drops to government and educational institutions, public access channel production
10 including a local studio, the provision of PEG Channels, and a limited amount of local origination
11 programming. However, upon the adoption of DIVCA and the substitution of a State Franchise
12 for a local franchise, the financial and non-financial benefits are strictly regulated and limited by
13 DIVCA and, in general, are limited to a five percent (5%) franchise fee, a one percent (1%) PEG
14 Fee, one (1) governmental channel,³ and nothing more. The PCTA purchases downstream drops
15 from one or more of the Cable Operators and does not possess any form of an institutional
16 network or institutional capacity.

17 II. THE PROVISION OF PEG CHANNELS AND PEG FEES CONSTITUTES A
18 VOLUNTARY DECISION ON THE PART OF THE CABLE OPERATORS TO ENJOY
19 THE BENEFITS OF DEREGULATION PURSUANT TO DIVCA AND SHOULD NOT
20 BE UPSET BY WAY OF FEDERAL INTERVENTION.

21 DIVCA constitutes a comprehensive and integrated regulatory/deregulatory legislative
22 scheme whereby cable operators can escape many of the regulatory obligations sanctioned by the
23 Cable Communications Policy Act of 1984, as amended (Pub.L. 98-549 *et seq.*, 98 Stat. 2779, *et*
24 *seq.*) (the "Cable Act") in exchange for certain minimalistic commitments on the part of the cable
25 operator in terms of the payment of franchise fees, the provision of PEG Channels, the payment of
26

27 _____
28 ³ The PCTA currently programs one (1) government channel. DIVCA does provide for
additional channel capacity upon the satisfaction of usage triggers.

1 PEG Fees, and minimal customer service regulations. In the case of the PCTA, the Cable
2 Operators chose, without compulsion, to escape many of these federally authorized impositions
3 and exactments in exchange for voluntarily providing PEG Fees and PEG Channels to their host
4 communities. The Commission should not usurp the legislative compromise as set forth in
5 DIVCA by retroactively allowing Cable Operators to charge some or all of these dedications, in-
6 kind and cash, against the franchise fee thus, in essence, forcing the host jurisdiction to bear the
7 entire cost of the provision of PEG Channels and PEG Services. Having gotten the “benefit of the
8 bargain,” pursuant to California statutory law, the Commission should not utilize Federal Law to
9 intercede on the part of the Cable Operators to the detriment of the PCTA and its subscribers.
10 Thus, the PCTA respectfully urges the Commission to not apply its ruling, whatever that may be,
11 to states that have transferred franchising authority from local franchising authorities to State
12 government or otherwise provided a deregulatory offramp to the cable industry.

13 III. PEG CHANNELS AND PEG SERVICES PROVIDE SIGNIFICANT BENEFIT TO THE
14 CABLE OPERATORS AND ARE THUS NOT CONTRIBUTIONS TO THE LOCAL
15 FRANCHISING AUTHORITY.

16 PEG Channels, and associated commitments for PEG capital facilities, provide no
17 economic advantage to the PCTA. The PCTA does not charge for the provision of PEG Channels
18 or PEG programming, does not allow advertising upon PEG Channels or within PEG
19 programming, but rather provides these channels, and associated programming, upon a gratis basis
20 to local residents in order to enhance voter information, further public safety, and educate
21 residents regarding the many benefits and opportunities which are available for growth and
22 education within the jurisdictional boundaries of the host cities. PEG Channels, and associated
23 PEG programming, are vehicles of general benefit throughout a franchise area and constitute an
24 essential conduit for informing and educating our electorate. PEG Channels bring people together
25 by emphasizing their commonalities and shared values and, as a result, make the Cities of
26 Fountain Valley, Huntington Beach, Stanton and Westminster better places for all persons and
27 businesses to live and operate, including the Cable Operators.

1 In addition, PEG Channels, and associated PEG programming, also provides a direct
2 advantage to the Cable Operator in that PEG programming is unique to the lineups of the
3 respective Cable Operators and not available to their competitors whether by way of broadcast
4 channels or satellite delivery.

5 Sadly, allowing the Cable Operators to offset “in-kinds”, such as PEG channel capacity,
6 will likely result in the curtailment, if not elimination, of PEG Programming. The franchise fees
7 paid to the Member Cities, through the PCTA as a conduit, are utilized to fund critical services
8 such as law enforcement, fire protection, parks and recreation, emergency services, and the like.
9 Although the economy in general may have recovered significantly from the last recession, cities
10 and counties, specifically those in California, have not. Cities continue to be strapped for revenues
11 and are often forced to reduce public services in order to fill budget gaps. Such is true for the
12 Member Cities. If forced to choose between the provision of general fund services, including law
13 enforcement and fire protection, and funding PEG Channels through the use of general fund
14 revenues, which would be the practical effect of a franchise fee offset, it is unlikely that PEG
15 Programming could or would be provided at the current level. It is not an understatement to say
16 that the FNPRM threatens to limit or eliminate PEG Channels which are designed to better inform
17 and empower the public.

18 The Cable Act encouraged the creation of PEG Channels and the promotion of PEG
19 Programming. For the roughly thirty-five (35) years since the adoption of the Cable Act, not even
20 the most aggressive cable operator has credibly argued that “in-kinds,” especially PEG Channels,
21 should be offset against the franchise fee. The franchise fee, limited to five percent (5%) of Gross
22 Revenues by the Cable Act, is not a market-driven indicator of the true fair market value rent of
23 the use of the public rights-of-way by a cable operator. The five percent (5%) franchise fee cap is
24 simply a legislative compromise – an arbitrary number. Significant evidence exists that fair
25 market value rent for the use of the public rights-of-way, absent an arbitrary federal limitation,
26 would significantly exceed five percent (5%) of Gross Revenues. However, Congress chose,
27 rightly or wrongly, in 1984 to limit the franchise fee to five percent (5%) of Gross Revenues. In
28

1 the same legislative enactment, it created the structure and potential funding for PEG Channels
2 and PEG Programming. Almost thirty-five (35) years later, the Commission should not play one
3 of those provisions against the other and utilize an under-market franchise fee limitation to destroy
4 PEG Programming. Such was not the intent of Congress and such is not good public policy.

5 Dated: November 12, 2018

RUTAN & TUCKER, LLP
WILLIAM M. MARTICORENA


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7 By: 
8 William M. Marticorena
9 General Counsel, Public Cable Television
10 Authority
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EXHIBIT A

Original produced shows during the past 9-12 months. Numbers in parentheses denote the number of episodes produced for that series in the past year.

CityWORKS (5)	HB Connected (24)	Miss Huntington Beach
Orange Slices (3)	Fountain Valley Fire Scholarship Program	History of Ms. Westminster
WOW - That's in OC (5)	Dept, documentary Westminster Community	documentary
City Council Meetings HB (24)	PCTA Website Promo	Heartbeat of HB (1)
City Council Meetings WM (24)	Live Election Night Coverage	Town Hall Meetings (3)
City Council Meetings FV (24)	Facility Rentals - ST	FV 60 th Anniversary Promo (6)
Planning Commission Meetings HB (24)	Facility Rentals - FV	Fuel Up Fitness (3)
Planning Commission Meetings FV (24)	HB Candidate Statement	History of Golden West College Documentary
Surf City Highlights (12)	FV Candidate Forum	FV Employee Recruitment Video
Young at Heart (3)	Miss Westminster	Miss FV
The O Scene (12)	Scholarship Program	Scholarship Program
Safety Net (1)	HB 4 th of July Parade	
The H. Bee	HB Biz Break (1)	HB Christmas Concert
FV Restaurant Week	Light a Light of Love	